IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9511 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRAKUMAR KANMAL JAIN

Versus

GENERAL MANAGER WESTERN RAILWAY

Appearance:
MR YN OZA for Petitioner
MR UM SHASTRI for Respondent No. 1
MR YM THAKKAR for Respondent No. 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 27/03/2000

CAV JUDGEMENT (Per D.M.Dharamadhikari, CJ)

Complete apathy, inaction, procrastination when called upon to take decision on the part of the authorities of Western Railways Administration compelled the present petitioner, a Public Spirited Citizen, to bring this Public Interest Litigation for intervention by this Court.

2. The State of Gujarat has by notification dated 9.1.84 approved the Final Town Planning Scheme No.23. It underwent some changes as contained in notification dated 28.11.86 and 28.11.95.

3. The Town Planning Scheme No.23 provides reservation of 80 ft of road from Power House to Kaligam and Chandkheda. Keeping in view the increase in traffic, the decision to widen up the road upto 80 ft was taken.

4. On the western side of the proposed road is property of the Western Railway and on the eastern side the properties and lands are possessed by different individual plot holders. So far as the individual/property owners are concerned, the Respondent Ahmedabad Municipal Corporation had issued notice under Section 67 and 78 of the Gujarat Town Planning & Urban Development Act, 1976 and the Rules of 1979 framed thereunder. (for short the "Act" and the "Rules").

5. It has been stated on affidavit on behalf of the Corporation that it had initiated correspondence with the authorities of the Western Railways soon after the preliminary scheme was sanctioned. According to them on 24.4.1984, a meeting was held between the Authorities and the Corporation and the Western Railway. It was decided that Shri C.B.Lal be appointed as Valuation Officer to determine the market value of the properties of the Railway. The minutes of that meeting held on 24.4.1984 have been annexed with the reply of the Corporation. The Western Railways having its office at Baroda on 2.1.85 informed the Corporation about the amount of valuation fixed by the Valuer. On receipt of the above report of valuation from the Railways, the Standing Committee of the Corporation passed Resolution No. 1108 on 10.12.1985 and approved and accepted the valuation fixed by the Railways for the aforesaid lands. The said resolution was also approved in the General Body of the Corporation on 24.12.1985. Inspite of the above proceedings and acceptance of valuation of the properties proposed by the Railways, the Railways did not hand over the possession of the aforesaid land. As a result, the T.P.S.No. 23 remains unimplemented and the proposed road has not been constructed resulting into great inconvenience to general

public.

6. The Corporation for early implementation of the scheme has been continuously writing to the Railways and in the affidavit it has been mentioned that letters were sent by the Corporation to the Railways on 12.2.86, 4.3.86, 30.9.86, 8.12.86, 7.1.87, 18.3.87, 21.3.87, 30.4.87, 21.7.87, 30.1.89, 16.2.89, 20.4.91 and even thereafter which contained a request to the Railway Authorities to hand over the possession of the land in question and to accept the amount fixed by the District Valuation Officer. Despite repeated approaches in writing and orally no steps were taken by the Railway Authorities to hand over possession of the land in question till this date. A recommendatory letter of the then Railway Minister Madhavraoji Scindia advising the Authorities to relinquish Railway land admeasuring 5807.80 sq.mtrs from Sabarmati Power House to Kabir Chowk to the Respondent Corporation was not heeded to. The copy of the letter of then Railway Minister dated 29.12.88 has also been annexed with the reply affidavit of the Corporation. Based on the recommendatory letter of the Railway Minister, the Corporation again wrote to the Divisional Railway Manager (Works) Pratapgarh, Vadodara to hand over possession of the Railway Land for implementation of the scheme but no action was taken.

7. Even after filing of this Public Interest Litigation, the indifference and negligence on the part of the Railway Authorities continued. Despite service of notice on the General Manager (Western Railways), Church Gate, Bombay on 16.2.2000 noone appeared on behalf of the Railways. The Court therefore issued a special notice to the General Manager, Western Railways, Mumbai. On 28.2.2000, the Learned Counsel appearing for the respondents informed the Court that there had been a meeting of the Railway Authorities and the Corporation Authorities and after demarketing the area for surrender, the matter has been forwarded to the General Manager for approval. Time was sought on behalf of the Railways to place the information in writing and on affidavit. The matter was listed on 29.2.2000.

8. This matter then came up for hearing on 6.3.2000. On that day the Counsel for the Railways was not available and no reply or affidavit were filed on behalf of the General Manager. Shri Jayant Patel, the other Railway Counsel on panel incidentally present in the Court took time to take instructions to file a written reply. Thereafter on 29.2.2000, a reply and affidavit on behalf of the Railways was filed by Shri A.P.Abraham, AEN

(NW) ADI which was completely of an evasive nature. A bare perusal of the reply and affidavit would show that without denying the facts stated in the petition and the reply on affidavit of the Corporation, the Railway Authorities did not give any explanation for not taking the decision in the matter and not handing over the properties of the Railways to the Corporation for implementation of the Town Planning Scheme. The short and cryptic reply in para 10 of its affidavit is:-

"I say that the land belonging to the railways and in possession of the railway cannot be handed over to any other authority or individual for any purpose without undergoing the due process of law for doing the same and the same has to be done by the prescribed authority under the relevant law and as such also the petition as filed requires to be rejected."

An additional affidavit is filed by the said Officer Para 2 reads as under:-

"As per the developed plan by A.M.C, Rly. land of approximately 5785.87 sq.mtrs is required to be acquired. Further it is brought to the knowledge that as per proposed new road alignment, existing Railway staff quarters and service buildings which are in use at present are required to be demolished and relocated and same details are shown in the plan."

"The above railway land and the structures are at use in present and not surplus to the Railway requirement. This plan is further submitted to Divisional Railway Manager Office on 21.2.2000 which was further sent to Railway's Head Quarter Office at Mumbai on 23.2.2000 with a request to solicit further instructions in this matter."

9. The above quoted reply on affidavit given by the Railways clearly demonstrates their complete lack of commitment to the social needs. On the date of hearing of this petition, the Advocate on record appeared to make a request for adjournment on behalf of the Counsel for the railways. Taking into view the evasive reply and procrastinative attitude adopted by the Railways the Court declined to grant any further adjournment. The Learned Counsel who appears for the Railways brought to the notice of this Court the provisions of Section 69 of the Gujarat Town Planning and Urban Development Act, 1976 and stated that by virtue of sub-section 5 of the said

Section, T.P.S. cannot be enforced `in relation to any operational construction undertaken by the Central Railways or State Government.'

10. The provisions of Section 69 with different sub sections and Sub-Section 5 reads as under:-

"(1) On and after the date on which the preliminary scheme comes into force, the appropriate authority shall, after giving the prescribed notice and in accordance with the provisions of the scheme.

(a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as contravenes the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with;

(b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the appropriate authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) any expenses incurred by the apporpriate authority under this section shall be recovered from the person in default or from the owner of the plot in the manner provided for the recovery of sums dues to the appropriate authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravens a town planning scheme or whether any provision of a town planning scheme is not complied with in the erection or carrying out of ansy such building or work, it shall be referred to the State Government and the decision of the State Government shall be final and binding on all persons.

(4) No person shall be entitled to compensation in respect of any damage,

loss or injury resulting from any action taken by the appropriate authority under the provisions of this section except in respect of the building or work begun before the date referred to in sub-section (1) and only in so far as such building or work has proceeded until that date.

Provided that any claim to compensation, which is not barred by this sub-section shall be subject to the condition of any agreement entered into between the claimant and the appropriate authority.

(5). The provisions of this section shall not apply to any operational construction undertaken by the Central Government or a State Government."

11. From the resume of the facts that we have given above, it is no longer open to the Railway to take a stand that it would not hand over the possession of the properties for implementation of the Town Planning Scheme. As has been stated on affidavit only some structures on part of the land covered by the Scheme, such as railway servants' quarter are existing. It is not possible to hold that those constructions can be called "operational constructions undertaken by the Central or State Government." The Railways Authorities had already agreed for valuation of the properties through their Valuer. Their own valuation was accepted by the Corporation and yet there appears to be disinclination to take decision in time and to hand over the possession of the Railway properties. This apathy and inertia on the part of the railway authorities compel this Court to issue direction against them so that the T.P.S. is now implemented without any further delay.

12. We, therefore allow this petition and direct the respondent no.1 General Manager, Western Railways, Church Gate, Mumbai to deliver the possession of the Railway properties mentioned in its valuation report dated 2.1.85 (Annexure 2 to the reply of the Corporation) on accepting the payment for its market value at the rates determined by the Valuer in the said report. The necessary action be taken by the Railways within a period of 6 weeks from service of writ on them failing which the respondent no.2 Ahmedabad Municipal Corporation and respondent no.3

Ahmedabad Urban Development Authority would be at liberty to take coercive measures in accordance with Section 68 and 69 of the Gujarat Town Planning and Urban Development Act, 1976. In the circumstances, the Western Railways represented by respondent no.1 shall pay an amount of Rs.5000/- to the petitioner as costs for bringing this Public Interest Litigation. Rule made absolute.

(D.M.Dharamadhikari, CJ)

(B.C.Patel, J)

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